No. 16,092

United States
COURT OF APPEALS
for the Ninth Circuit

STEVEN VOLOUDAKIS and KATHERINE VOLOUDAKIS,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition for Review of the Decision of the Tax Court of the United States

PETITION FOR REHEARING

McDANNELL BROWN,
805 Equitable Building,
Portland 4, Oregon,
Attorney for Petitioners.

STEVENS-NESS LAW PUB. CO., PORTLAND, ORE. 1-60

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PETITION FOR REHEARING

TO THE HONORABLE WALTER L. POPE and HONORABLE RICHARD H. CHAMBERS, JUDGES OF THE ABOVE ENTITLED COURT:

The above named petitioners, and each of them, respectfully petition this Court for a rehearing in this proceeding and a reconsideration of the Court's decision upon the following grounds:

1. The decision herein is inconsistent with the decision of this Court in the case of *Oesterreich v. Commissioner,* 9 Cir., 226 F.(2d) 798.

2. The decision is based upon a technical and unrealistic interpretation of the instrument in question, without due consideration for any of the surrounding facts, circumstances or conduct of the parties as established by undisputed testimony.

QUESTION FOR DECISION

The question for decision in this case is whether the transaction evidenced by a written document denominated "lease" between a property owner and a prospective "lessee" in which petitioners, the existing lessees, joined to eliminate their leasehold interest and in consideration of which they were to receive certain payments denominated "rental" was *as between petitioners and the new lessee* an assignment of their leasehold interest or a sublease, and consequently whether the consideration received by petitioners constituted capital gain as consistently reported by petitioners from the inception of the agreement or was taxable as ordinary income as contended by the Commissioner.

ARGUMENT

1. *Oesterreich* comparison. The facts and circumstances of record in the instant case would seem to establish a much stronger claim that the document involved actually was an assignment or conveyance of a leasehold estate than the parallel facts and circumstances in the *Oesterreich* case. As to the factors mentioned by the Court, it appears that the documents in both cases were denominated "lease" and that the pay-

ments reserved were called "rent." The decision here turns explicitly upon the point that the so-call "lease" provides that the "lessors" may in the event of default "repossess" the property. Likewise, the *Oesterreich* "lease" provided that in the event of default lessors might terminate the lease.

In *Oesterreich,* the rental payments were not only entered on the lessor's books as "rent" but for years were reported on her tax returns as "rental income." Petitioners here did not record their payments as rental but reported it on their tax returns specifically and explicity as capital gain on the theory of a sale. In the *Oesterreich* case there were only two parties to the agreement, so there would seem to have been no reason for not executing a contract of sale instead of a "lease" if such were the intent. In the instant case the document was a three-way agreement: a lease between the landlord-owner and the ultimate lessee in possession, Pacific, to which petitioners were made parties merely for the purpose of eliminating whatever interest they might have under their previous lease.

This Court said in *Oesterreich*:

> "What the parties believe the legal effect of such transaction to be should be the criterion." (p. 801)

Petitioners herein believed they were parting with their entire estate, making an absolute conveyance of their entire estate. They not only clearly said so on their tax returns but so testified (Tr. pp. 47, 48, 49, 50). This testimony was confirmed by Mr. Cook, representative of Pacific, who negotiated the transaction (Tr. pp. 58, 59).

This Court further said in *Oesterreich*:

> "We must look therefore to the intent of the parties in terms of what they intended to happen." (p. 802)

It is undisputed that the new lessee, Pacific, intended to acquire and retain permanent possession of the premises to the complete exclusion of petitioners for the entire balance of petitioners' original leasehold term. Pacific bought it for specific, permanent use (Tr. p. 59), and agreed to spend $100,000.00 remodelling it for its specific purposes, which rendered it unsuitable for further use by petitioners (Tr. p. 59). Petitioners "had to vacate completely," "entirely." "They had to get out" (Tr. pp. 58, 59).

Further on, this Court said in *Oesterrich*:

> "It is enough that the lease provides a right * * * to take title to the premises (leasehold) for which the rental is paid." (p. 802)

Not only does the "lease" here make such provision, not only does the undisputed evidence disclose such an intent, but that is actually and exactly what happened. The lease period had expired prior to these proceedings and Pacific had, indeed, acquired every shred of interest of petitioners in their leasehold. Thus the expressed intent of the parties was confirmed irrevocably by full performance of the agreement.

If there could be any remaining doubt the testimony of Mr. Churchill Cook, agent of Pacific who negotiated the deal, should dispose of it. He testified (Tr. p. 61) that petitioners did not want to lease or sublease the

property. But when Mr. Cook advised petitioners that he had "a concern that was worth a million dollars or more who would want the space" (Tr. p. 60) a deal was made. It does not appear that petitioners even had legal advice on the contract although petitioner Steven Voloudakis was "not a lawyer" and when asked by the trial judge what his idea of a lease was, testified "I do not know from one end to the other" (Tr. p. 62).

2. This Court in its decision (page 5) quotes the following authority in footnote 3 in support of its position:

> "If the fundamental distinction between assignment and sublease is to be recognized, as seems desirable that it should be, the category into which a particular transfer is to be placed *should depend not upon the existence of a technical reversion* in point of time, but upon the intention of the parties to the transfer." (Emphasis supplied)
> 18 Cal. Law Rev. 1.

The Court, however, does not apply this rule. Its decision hinges solely and exclusively on a "technical reversion" provision, on the fact that the "lease" contained a provision for repossession of the premises in the event of default. A similar provision in the *Oesterreich* case was not considered significant enough to mention. The Court assumes gratuitously that petitioners "made that choice" of terminology, in spite of the fact that the record discloses clearly that the transaction was negotiated by Pacific through its real estate broker, that the provision in question was a very ordinary and customary provision in a lease and that petitioners "didn't know from one end to the other" about it. Certainly it

would offer no advantage to the petitioners to recover possession of a piece of property which had been thoroughly remodelled so as to be no longer suitable for their purpose, instead of holding Pacific Telephone and Telegraph Company (the million dollar concern) for the payment of the rent reserved.

The Court apparently completely disregarded not only the testimony of petitioners and Mr. Cook, referred to above, and the position taken by petitioners in filing their tax returns immediately following the transaction, but also certain other provisions in the contract itself which indicate petitioners' intent to relinquish their entire leasehold interest. Page 7 of the contract, paragraph 18, makes no specific provision for surrender of the premises on the termination of the "lease" to petitioners. It does specifically provide that all of the improvements provided for in the lease "shall remain the property of Sweeney (the lessor) on the termination of the lease." And paragraph 19 provides that on the termination of this lease "all obligation to Voloudakis (petitioners) shall terminate." Furthermore, in paragraph 10 the right is reserved to Sweeney only "to enter the premises for the purposes of repair and inspection at any reasonable time."

All of the foregoing facts and circumstances which appear either on the face of the questioned instrument itself or are supported by the undisputed evidence in this case make a very substantially stronger showing of the real intent of the parties that this transaction was, indeed, a sale of a leasehold interest so far as petitioners

were concerned, than does the record in the *Oesterreich* case. Certainly these circumstances in connection with the long recognized and thoroughly adjudicated presumption in favor of assignment,[1] which presumption has been recognized by this Court in the following cases:

Northwestern v. Security Savings and Trust Co., 261 F. 575 (578)
Madder v. LaCafske, 72 F.(2d) 602 (605)

would seem to be compelling considerations in support of petitioners' contention in this cause. Yet none of these circumstances seem to have received the consideration of the Court in reaching its decision.

CONCLUSION

It is respectfully submitted that a decision in this case under the facts and circumstances as they appear in the record consistent with the doctrine of the *Oesterreich* case should find that the transaction between petitioners and Pacific Telephone and Telegraph Company was in fact and in law a sale of a leasehold interest and as such was entitled to capital gains treatment for tax purposes as consistently reported by petitioners.

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[1] Note: Presumption of Assignment
Leadbetter v. Penthereu, 61 Ore. 168 (171).
Montesano v. Portland, 94 Ore. 677 (684).
Quine v. Sconce, 209 Ore. 486 (492).
Yoshida v. Security Ins. Co., 145 Ore. 325 (335).

Respectfully submitted,

McDannell Brown,
Attorney for Petitioners.

No. 16093

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

MARY HELEN BURTON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

LAUGHLIN E. WATERS,
United States Attorney,
ROBERT JOHN JENSEN,
Assistant United States Attorney,
Chief, Criminal Division,
BRUCE A. BEVAN, JR.,
Assistant United States Attorney,
Assistant Chief, Criminal Division,
600 Federal Building,
Los Angeles 12, California,
Attorneys for Appellee.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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No. 16093

IN THE

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MARY HELEN BURTON,

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APPELLEE'S BRIEF.

Statement of Jurisdiction.

Appellant was indicted with co-defendant Stewart in a two count indictment on October 10, 1957 [C. T. 2]*. A nonjury trial commenced on December 10, 1957 resulting in a conviction of appellant on Count One of the indictment on December 13, 1957 [C. T. 13]. On February 18, 1958, appellant was found in a nonjury trial to have been a second offender within the meaning of 26 U. S. C. Sec. 7237 and was sentenced to be committed to the custody of the Attorney General for a period of ten years [C. T. 19].

A timely notice of appeal was filed on February 25, 1958 [C. T. 24].

The District Court had jurisdiction under the provisions of 21 U.S.C. Sec. 174, 26 U.S.C. Sec. 7237 (c) and 18 U.S.C. Sec. 3231. This Court has jurisdiction of the appeal under the provisions of 28 U.S.C. Sec. 1291.

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*C. T. refers to Clerk's Transcript of Record; R. T. refers to Reporter's Transcript of Proceedings before Judge Westover; Yank. refers to Reporter's Transcript of Proceedings before Judge Yankwich.

Statement of the Facts.

On May 2, 1957, two deputy sheriffs employed by the County of Los Angeles and assigned to the Narcotic Detail, conducted an investigation of the appellant. [R. T. 155-160.] At about 10:05 P. M., the officers observed the appellant and one Edwin Stewart, co-defendant of the appellant, arrive in an automobile and park in the driveway of 733 East 55th Street [R. T. 163-164]. The officers observed the defendants enter a garage apartment located on the rear lot and return to the vicinity of their car in approximately 20 minutes [R. T. 167-168]. When the defendants walked down the driveway towards the automobile in which they had arrived, the officers asked them to stop, at which time Stewart made several lunges towards the far corner of the driveway [R. T. 172-173]. Immediately after yelling "Police Officers. Stop.", the officers observed the appellant and noticed that she had her hand underneath her coat and that a small object fell from the coat to the ground [R. T. 175].

The defendant Stewart was seized and appellant was ordered to place her hands on the hood of the automobile [R. T. 175]. Thereafter one of the officers retrieved a small manila envelope from the ground, Exhibit 1-A, which later was identified to contain 88 grains of heroin [R. T. 177; 141-142; 144].

The defendants thereafter were booked in the Los Angeles County jail for violations of both the Federal Narcotics Law and the narcotics laws of the State of California [R. T. 349].

Appellant denied owning, leasing or renting the premises at 733 East 55th Street [Yank. 23-24] and also denied that the object recovered from the ground was hers [Yank. 25, 22].

ARGUMENT.

A. The Instant Heroin Being Abandoned, There Was No Illegal Seizure Thereof.

As pointed out in the Statement of Facts, *supra,* at the time the officers yelled "Police Officers. Stop." appellant dropped Exhibit 1-A, the packet containing 88 grains of heroin, on a driveway of premises in which she had no interest. Appellant's obvious purpose in doing so was to remove from her person the incriminating contraband. It is equally clear that appellant no longer wished to have anything to do with the packet, this being the last item in the world she then wished to possess.

Viewing the transaction from a legal standpoint, appellant desired to and did abandon the packet when she learned police officers were about to take her into custody. This being so, there is no illegal search and seizure by reason of the officer's retrieving the packet from a driveway. The protection of the Fourth Amendment does not extend to abandoned property or to driveways open to public view, but only to "persons, houses, papers and effects."

Hester v. United States, 265 U. S. 57 (1924) is the leading authority on seizure of abandoned articles. There, Revenue Officers observed the transfer of a bottle, attempted apprehension of Hester and one Henderson, and during the pursuit, each defendant threw away a bottle of moonshine whiskey. The Supreme Court held the evidence admissible against claims that it was obtained in violation of the Fourth and Fifth Amendments:

> "The officers had no warrant for search or arrest, and it is contended that this made their evidence inadmissible, it being assumed, on the strength of

the pursuing officer's saying that he supposed they were on Hester's land, that such was the fact. It is obvious that even if there had been a trespass, the above testimony was not obtained by an illegal search or seizure. The defendant's own acts, and those of his associates, disclosed the jug, the jar and the bottle—*and there was no seizure in the sense of the law when the officers examined the contents of each after it had been abandoned.* This evidence was not obtained by the entry into the house and it is immaterial to discuss that. The suggestion that the defendant was compelled to give evidence against himself does not require an answer. The only shadow of a ground for bringing up the case is drawn from the hypothesis that the examination of the vessels took place upon Hester's father's land. As to that, it is enough to say that, apart from the justification, the special protection accorded by the Fourth Amendment to the people in their 'persons, houses, papers, and effects,' is not extended to the open fields. The distinction between the latter and the house is as old as the common law. 4 Bl. Comm. 223, 225, 226."

In *Cannon v. United States,* 66 F. 2d 13 (8th Cir., 1933), a similar abandonment occurred. Revenue Officers approached appellants' car, commanded them to stop, at which time appellants fled. During the pursuit, they discarded bottles of whiskey they later moved to suppress. The Court held the articles were abandoned and thus admissible in evidence:

"When the defendants started to flee, the officers properly disclosed their identity, gave the proper command to stop, and then rightful pursuit. It is not to be supposed that the defendants threw the liquor out of the car as a delivery of it to the officers,

but in the attempt to destroy it and conceal the liquor and their guilt. Upon these facts there was no violation of the Fourth Amendment. *Hester v. United States,* 265 U. S. 57, 44 S. Ct. 445, 68 L. Ed. 898."

In *Lee v. United States,* 221 F. 2d 29 (D. C. Cir., 1954), policemen investigating a murder commanded appellant to step out of his car. As he did so, a napkin fell into the street between the car and the curb, which contained stolen jewelry. The Court held the jewelry admissible in the grand larceny trial, stating:

"When asked to get out of the car, the accused was seen to drop into the street, between the car and the curb, a napkin which contained the jewelry later used as evidence. *There was here no seizure in the sense of the law when the officers examined the contents of the napkin after it had been dropped to the street.* Hester v. United States, 1924, 265 U. S. 57, 44 S. Ct. 445, 68 L. Ed. 898." (Emphasis added.)

In *Haerr v. United States,* 240 F. 2d 533 (5th Cir., 1957), after being approached by officers, appellant fled in his car and while fleeing, threw away two boxes containing marihuana. After holding no search occurred, the Court went on to hold that, since the property had been abandoned, also there was no seizure:

"Nor was there a seizure; appellant, by his own design and choice, threw the boxes containing marihuana from the car and *there was no seizure in the legal sense when the patrol returned to recover them.* Hester v. United States, supra, and Lee v. United States, 1954, 95 U. S. App. D. C. 156, 221 F. 2d 29." (Emphasis added.)

Applying the rule of the foregoing cases to the instant facts, it appears inescapable that appellant voluntarily abandoned the instant marihuana packet in a driveway. Thus the evidence was admissible by reason of any one of the following factors:

(1) According to the cases, there is no "seizure" within the meaning of the Fourth Amendment when voluntarily abandoned property is retrieved;

(2) The Fourth Amendment does not apply to abandoned property;

(3) The Fourth Amendment does not apply to seizures made in open fields, or, as here, in open driveways.

B. Appellant Had No Standing to Complain of a Search or Seizure.

For the foregoing reasons, appellee believes that no illegal search or seizure was made. However, even if there had been, appellant had no standing to complain thereof.

Appellant specifically denied any interest either in the premises searched or in the goods found on the night of her arrest [Yank. 23-25]. It long has been hornbook law that the guarantee of the Fourth Amendment is a personal privilege which may be asserted only by the one aggrieved, and that a claim of an interest in the searched premises or in the goods seized is necessary for suppression of allegedly illegally obtained goods.

In *Ingram v. United States,* 113 F. 2d 967 (9th. Cir., 1940), this Court stated:

> "As noted, Flynn or Woods, the sole lessee of the premises as shown by the evidence, made no complaint or effort to suppress the evidence. The right to complain because of an illegal search and seizure

> is a privilege personal to the wronged or injured party, and is not available to anyone else. Cornelius on Search and Seizure, Sec. 12, p. 62; MacDaniel v. United States, 6 Cir., 294 F. 769. Where the defendant disclaimed ownership of the property seized, he cannot complain of the illegality of the search. Kwong How v. United States, 9 Cir., 71 F. 2d 71; Goldberg v. United States, 5 Cir., 297 F. 98, 101; Driskill v. United States, 9 Cir., 281 F. 146."

In *Baskerville v. United States,* 227 F. 2d 454 (10th Cir. 1955), it was held:

> "The right of protection against unreasonable searches and seizures is personal. To render the seizure unlawful, the defendant must claim some proprietary or possessory interest in that which was seized and sought to be introduced in evidence against him."

As her only authority supporting her right to complain of the seizure, appellant relies on *Williams v. United States,* 237 F. 2d 789 (D. C. Cir., 1956). There, as here, in a pre-trial motion, appellant had denied ownership of the contraband which he had dropped after he had been taken into custody and while he was in the police station. The Court held that since the unchallenged prosecution evidence at the trial showed appellant had possession of the contraband, he had standing to complain of the illegal seizure.

First, there are distinguishing features to the *Williams* and the instant case.

1. The contraband there was contained on the appellant's person at the time of and after appellant's arrest. The contraband in the instant case was dropped by

appellant *before* she was taken into custody and at the very moment co-defendant Stewart was making a series of lunges to escape arrest. [R. T. 175, 226.] Thus the contraband here was not secured directly "as a result" of any illegal arrest, as was the case in *Williams*.

2. In the *Williams* case, the Court held that the suppression of evidence should have been granted "at the trial" rather than in the pre-trial hearing, since in the pre-trial hearing appellant had disclaimed ownership. The Court carefully pointed out that there was no such disclaimer at the trial and that the only evidence then was that the contraband was that of the appellant:

> "The contraband capsules were admitted in evidence. Since they were procured as a result of the illegal arrest the motion for their suppression made *at the trial* should have been granted.
>
> In a pre-trial motion to suppress appellant had disclaimed ownership of the capsules. *But* when his objection to their admission was renewed and acted upon *at the trial itself* the *unchallenged* testimony of the prosecution showed that the capsules were in appellant's possession until he dropped them, thus giving him standing to object." (Emphasis added.)

In the instant case, the distinguishing feature is that appellant stipulated that, in ruling on the objection to reception of evidence at the trial, the prior evidence at the motion to suppress could be considered by the Court. (Appellant's Br. p. 6, lines 1-3.) That prior evidence included appellant's denial of interest in the contraband. [Yank. 23-24, 25.] Thus, the evidence at the instant trial was *not* "unchallenged" that the instant marihuana was in appellant's possession.

Second, despite any distinguishing features, appellee is of the opinion that the *Williams* case is contrary to the rule requiring a *claim* of interest either in the premises searched or goods seized, as the case holds that prosecution proof of the defendant's possession is sufficient. In almost every conceivable case, there would be prosecution testimony tending to show that a defendant had constructive or actual possession of the contraband; otherwise, the finding of the contraband would have little relevance or significance as to the defendant. Hence, to say that prosecution proof of possession of illegally seized goods is sufficient to give one standing to object merely is to eliminate the rule requiring a claim of ownership or custody.

The Courts long have laid emphasis on the necessity of the *claim* rather than upon the fact of possession, as can be seen from an examination of the *Ingram* and *Baskerville* cases, *supra.* Even the Court of Appeals for the District of Columbia laid stress upon this aspect in several recent cases. In *Gaskins v. United States,* 218 F. 2d 47 (D. C. Cir., 1955):

> "The appellant was merely a guest in the apartment she says was illegally entered, and does not *claim* to have had any interest therein. She *disclaims* ownership of the drugs she contends were illegally seized. She herself was not searched until after she had been arrested with the narcotics openly in her possession. Since the appellant's personal rights were not violated, she has no standing to contend the entry and subsequent seizure were unlawful." (Emphasis added.)

And in *Scroggins v. United States,* 202 F. 2d 211 (D. C. Cir., 1953), it was held:

> "Appellant's standing to challenge must rest upon a *claim* either of possession of the contraband or its seizure from his premises. He denied possession and claimed that if the cigarettes were marihuana, they could not have been seized from his apartment. Thus appellant deprived himself of standing to invoke the rule." (Emphasis added.)

The necessity of a claim was markedly pointed out by Learned Hand speaking for the Court in *Connolly v. Medalie,* 58 F. 2d 629 (2d Cir., 1932):

> "Men may wince at admitting that they were the owners, or in possession, of contraband property; may wish at once to secure the remedies of a possessor, and avoid the perils of the part; but equivocation will not serve. If they come as victims, they must take on that role, with enough detail to cast them without question. The petitioners at bar shrank from that predicament; but they were obliged to choose one horn of the dilemma."

In *Williams,* the defendant equivocated, winced at admitting he was the owner of the contraband, yet was allowed to secure the remedies of a possessor by the Court of Appeals while avoiding the perils of the part. Since that holding is directly contrary to *Connolly* and other cases on this subject, appellee respectfully requests this Court not to follow the *Williams* decision.

Since appellant denied specifically an interest in the contraband and in the premises near which the contraband was found, appellant had no standing to complain of any illegal search and seizure, if such were made.

C. The Contraband Was Given to Federal Agents on a Silver Platter.

Should this Court find that (1) there was an illegal search and seizure and (2) that appellant has standing to complain thereof, appellee contends the instant evidence was handed the Government Agents "on a silver platter" within the meaning of the rule laid down by this Court in *Rios v. United States,* 256 F. 2d 173 and *Anderson v. United States,* 237 F. 2d 118.

There would seem to be no question but that the evidence shows that Government agents did not participate in the search nor know about this case until after the arrest. [Yank. 48; R. T. 58, 90-91, 93, 111-112.] Admittedly, these officers have cooperated with one another over a period of four to five years. Appellee would distinguish this particular case from that pattern of cooperation by the testimony of federal agent Richards at [R. T. 114-115]:

> "Q. Isn't it a fact that all the cases, Mr. Richards, involving narcotics, the arrests in all the instances arising therefrom, which Officers Landry, Farrington, and Gillette work on, are always joined with you? A. Not all cases. I mean the cases where an officer makes purchases from various people using government official advanced funds, they are the ones which are prosecuted in federal court and which we work jointly together.
>
> Q. No other type of cases? A. What do you mean?
>
> Q. No other type of cases than those just mentioned by you? A. That's all I know."

Thus, the pattern of cooperation built up by the Los Angeles County Sheriff's office and the Federal Bureau of Narcotics is with respect to cases worked jointly by them, that is, when purchases are made by an agent or a deputy from a prospective defendant and other agents or officers observe the transaction. No pattern of co-operation has been established whereby arrests are made by deputies without probable cause and the fruits thereof are turned over to federal agents.

Appellee would be less than candid with the Court, however, if it did not admit that it would prefer to see this Court decide the instant case on either the ground that the instant heroin was abandoned, or that appellant has no standing to complain of its seizure, or both. In view of the granting of certiorari in the aforesaid *Rios* case by the Supreme Court, it well may be that the long-settled rule of "silver platter" may be cast aside by that Court.

Moreover, appellee believes its arguments of abandonment and lack of status to complain have firmer basis in the record than its argument concerning the lack of cooperation between the agencies.

D. The Failure to Plead the Prior Offense in the Original Information Is Not in Violation of the Constitution.

The constitutionality of the Boggs Act (See 21 U.S.C. Sec. 174 and 26 U.S.C. Sec. 7237) and its procedures would seem to have been settled in this Circuit by *Sherman v. United States,* 241 F. 2d 329 (9th Cir., 1957).

E. The Trial Court Had the Duty to Impose a Ten Year Sentence.

Nothing would seem to be more clear than the language of 21 U.S.C. Sec. 174 that:

> "For a second or subsequent offense (as determined under Section 7237 (c) of the Internal Revenue Code of 1954), the offender shall be imprisoned not less than ten or more than forty years. . . ."

The fact that appellant insisted upon and won the right to waive a jury trial [See R. T. 492-512] on the issue of her being a second offender under 26 U.S.C. Sec. 7237 (c) would not seem to alter the mandatory sentence provisions of 21 U.S.C. Sec. 174.

Moreover, the propriety of appellant's having waived her right to a jury trial is unquestioned in this appeal.

See:

Federal Rules of Criminal Procedure, Rule 23 (a);
Padilla v. United States, ... F. 2d .....(No. 16, 162, 9th Cir., decided May 6, 1959).

Conclusion.

Appellant, previously convicted in federal court in 1954 of a sale of narcotics, and previously convicted of the felony of forgery, was found to be in possession of narcotics again in May, 1957. The law, in its wisdom, precludes the use of evidence obtained by arrests made without what the law describes as probable cause.

However, the law grants the privilege of suppressing such evidence only to those bold enough to acknowledge their interest therein. In addition, the law renders ad-

missible in any event evidence discarded and abandoned by defendants.

Appellant dropped the instant heroin like the proverbial hot potato, thus abandoning it. Moreover, she specifically denied any interest therein, thus foreclosing her from asserting the technical defense of illegal search and seizure. Consequently, no error was committed in receiving the instant heroin in evidence and in convicting appellant.

This being appellant's second federal conviction involving narcotics, she very properly received the mandatory sentence of ten years prescribed by Congress. Appellee therefore respectfully submits that the judgment appealed from should be affirmed.

Respectfully submitted,

LAUGHLIN E. WATERS,
United States Attorney,

ROBERT JOHN JENSEN,
Assistant United States Attorney,
Chief, Criminal Division,

BRUCE A. BEVAN, JR.,
Assistant United States Attorney,
Assistant Chief, Criminal Division,

Attorneys for Appellee.